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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Rules and	)	CS Docket No. 97-98
Policies Governing Pole	)	
Attachments	)	

COMMENTS OF TIME WARNER CABLE

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SUMMARY

Time Warner Cable ("Time Warner") suggests that the Commission take no action in this proceeding beyond clarifying (1) how to treat depreciation expense when a utility has a negative accumulated depreciation balance; (2) what Part 32 account expenses should be included in pole attachment carrying charges for telephone companies; and (3) the formula for use of utility conduits. These are matters that have not been addressed in a rulemaking proceeding by the Commission.

But the Commission should resist the efforts of the utilities to obtain more "accuracy" in the formula. What the utilities really mean when they request more "accuracy" is the addition of more investment and expenses to the formula. What they don't explain is that the formula contains estimates and approximations that cut both ways. And were the Commission to achieve greater "accuracy," it could only do so by adding computations that, on balance, would change the bottom line results only marginally.

The Commission has addressed most of the issues raised by the utilities time and again. The existing formula has withstood the test of time -- including numerous appeals. We strongly urge the Commission not to revise it. The result would only be uncertainty, litigation, and complexity. If the Commission were to balance fairly the final result, the bottom line pole attachment rates would change little.

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COMMENTS OF TIME WARNER

Time Warner Cable ("Time Warner"), a division of Time Warner Entertainment Company, L.P., submits these Comments in response to the Commission's Notice of Proposed Rulemaking in this proceeding.

Time Warner agrees that it makes sense for the Commission to seek comment on (1) Southwestern Bell Telephone Company's ("SBC's") Petition for Clarification, 1/ (2) the interplay between the Part 31 and 32 accounts for attachments to telephone company poles, and (3) the proper formula for conduit attachments. None of these matters has been fully addressed in a rulemaking proceeding. But to the extent that the Commission forwards questions raised in a "Whitepaper" prepared on behalf of American Electric Power Service Corporation, Commonwealth Edison Company, Duke Power

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1/ Petition for Clarification, or in the Alternative, a Waiver of Southwestern Bell Telephone Company, August 26, 1994.

Company, Entergy Services, Inc., Florida Power and Light Company, and Northern States Power Company, "it is like deja vu all over again." 2/

Never having accepted Commission regulation over pole attachments in the first place, many members of the electric utility industry have fought and refought the same issues since the late 1970s. The extension of the pole attachment rate formula to telecommunications attachments in the 1996 Telecommunications Act and other recent developments are no basis to resurrect, yet again, contentious issues long since put behind it by the Commission.

I. THE COMMISSION SHOULD NOT REVISIT LONG-SETTLED ISSUES

There will always be a way to "improve accuracy" in the application of the pole attachment rate formula. NPRM ¶ 1. But Congress and the Commission have both recognized that improving the accuracy of the formula may not be desirable if it adds to the formula's complexity. The Senate Report to the Pole Attachment Act makes clear that Congress "desires that the Commission institute a simple and expeditious CATV pole attachment program which will necessitate a minimum of staff, paperwork and procedures consistent with fair and efficient regulation." 3/ The Committee also recognized that

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2/ Attributed to Yogi Berra.

3/ S.Rep. No. 95-580, 95th Cong. 1st Sess. 21 (1977).

maintenance, administrative, and capital costs may all be difficult to determine: "As to some of these factors, the committee expects that the Commission will have to make its best estimate of some of the less readily identifiable actual capital costs." 4/ The Commission has echoed its own desire for a simple and expeditious formula. Indeed, when NCTA suggested in 1978 that a separate system of accounts be created by the utilities to deal with pole attachment issues, the Commission stated: "it would unnecessarily complicate what is intended to be a simple and expeditious process." 5/

For every "enhancement" suggested by the utilities that would include additional pole related costs in the formula, there is another balancing "enhancement" that could also be made to achieve more accuracy by excluding portions of other costs. In the final result, the Commission's formula would not differ significantly in the bottom line, but it would require considerably more numerous and complicated calculations. It would also have to rely on studies and internal accounting mechanisms that are neither publicly available nor easily verified. The number of disputes reaching the Commission would increase,

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4/ *Id.* at 20.

5/ 72 F.C.C.2d at 74.

perhaps dramatically, as would the number of Commission personnel called upon to resolve them. 6/

We believe that the Commission will discover once again in this proceeding -- as it has on several occasions in the past -- that achieving more "accuracy" is not justified in terms of the increased complexity and contentiousness that would result. We also believe that the Commission will see again that the mere suggestion that its pole attachment rate formula is unsettled raises the specter of reopening a spate of litigation before the Commission on these issues. Not only will pole attachment rate matters be impossible to settle while this proceeding is pending, but the utilities will raise a host of additional desired "enhancements" in their comments. Once loosed, the pole attachment genie will not easily be put back in the bottle.

The Commission should also keep in mind that its formula is the benchmark for regulation in many states. Some states, like Ohio, have adopted the FCC's formula in toto. In other states like Illinois, Michigan, and Kentucky, the FCC's formula has been slightly modified. Any modifications to the FCC's formula will not only lead to additional litigation before this Commission, but will also undoubtedly lead to efforts in the states to revise their formulas. Time

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6/ The Commission has recently adopted the practice of using administrative law judges to resolve factual disputes in pole attachment matters. Use of internal utility data, studies, and estimates would increase the number of factual issues in pole attachment disputes.

Warner suggests that the Commission leave the existing formula alone, address only those matters that have not yet been subject to rulemaking, and quickly conclude this proceeding.

A. Usable Space

The Commission calls forth memories of old campaigns by asking "whether our current pole height and usable space presumptions are still applicable." NPRM ¶ 18. Much of the dispute among the parties in the aftermath of enactment of the Federal Pole Attachment Act in 1978 centered on these issues 7/. The Commission determined, after an extensive rulemaking proceeding, that it would adopt a rebuttable presumption that the average utility pole is 37.5 feet long, with a minimum grade clearance of 18 feet and 13.5 feet of usable space. 8/ The Commission determined, along the way, that the 40 inches of separation -- called "neutral space" or "safety space" -- required by the National Electrical Safety Code ("NESC") between electric conductors and communications lines is "usable space." 9/

7/ *See In re Adoption of Rules for the Regulation of Cable Televisions Pole Attachments, First Report & Order,* 68 F.C.C.2d 1585 (1978); *Second Report & Order,* 72 F.C.C.2d 59 (1979); *Memorandum Opinion & Order,* 77 F.C.C.2d 187 (1980)..

8/ 72 F.C.C.2d at 69 77 F.C.C.2d at 191-93

9/ 72 F.C.C.2d at 70-71; 77 F.C.C.2d at 188-91.

A number of utilities continued to contest these findings and presumptions in complaint cases thereafter 10/, and eventually appealed the usable space issues were eventually appealed to the Court of Appeals, where the Commission's decision was affirmed by the District of Columbia Circuit. *Monongahela Power Co. v. FCC,* 655 F.2d 1254 (D.C.Cir. 1981). Chairman Fowler then called on the utilities finally to accept the Commission's methodology. 11/ In 1992, in a further effort to settle the issue for once and for all, Congress repealed the sunset provision contained in the 1978 Act that would have deleted the statutory formula after five years. 12/ The Conference Report supported the FCC's methodology, stating that the Act had "brought considerable certainty regarding the price of access to utility poles," and had "saved the FCC money by reducing the number of disputes brought to the Commission for administrative action." 13/ The Conferees explicitly noted that if

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10/ *See, e.g., Cable Information Services, Inc. v. Appalachian Power Co.*, 81 F.C.C.2d 383 (1980); *Television Cable Service, Inc. v. Monongahela Power Co.*, 88 F.C.C.2d 56 (1981).

11/ In discussing utility applications for review of the Common Carrier Bureau's handling of pole attachment complaint cases, Chairman Fowler stated:

> [W]e have to let the word go forth so that they know that we are applying these principles, and therefore they ought to go ahead and settle. Otherwise, we will settle it consistent with these principles.

FCC Open Meeting 10122181, October 22, 1981.

12/ H.R. Rep. No. 97-765, 97th Cong., 2d Sess. 31 (1982).

13/ *Id.*

the statutory formula were permitted to expire, "it would increase the likelihood that parties would petition to alter the formula by rulemaking, with the resulting increased burden on the FCC and uncertainty in the industry until such issues were resolved." 14/

Even with the court's affirmance, the Chairman's admonition, and Congress' approval of the FCC's implementation of the statutory formula, the matter was far from over. In July 1983, in direct contravention of the expressed desires of Congress that its repeal of the sunset provision permit the FCC to avoid having to deal with petitions for rulemaking to revise the formula, a group of nine electric power companies -- including a number that are encompassed by the holding companies that have submitted the Whitepaper in the current proceeding -- and the Edison Electric Institute petitioned the Commission for a rulemaking to reconsider usable space issues. 15/ In the Petition, the power companies reargued both the allocation of the "safety space" and the presumed

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14/ *Id.*

15/ Petition for Rulemaking re. Adoption of Rules Concerning Usable Space on Utility Poles, submitted July 19, 1993. The nine investor owned utilities sponsoring the 1983 petition included Mississippi Power Company, Mississippi Power & Light Company, and Alabama Power Company, all of which are part of the holding companies sponsoring the 1997 Whitepaper.

amount of usable space on a typical utility pole. The Commission denied the Petition in a Memorandum Opinion & Order in July 1984. 16/

The utilities were still not finished. After Alabama Power convinced the District of Columbia Circuit that the Commission's treatment of net pole investment and aspects of the carrying charge required modification, 17/ the Commission commenced yet another proceeding to consider its pole attachment formula. 18/ Although the Commission did not propose any changes to the usable space formulation, nevertheless, Alabama Power -- a petitioner in 1983 and a sponsor of the 1997 Whitepaper -- argued again that the Commission's usable space presumptions were incorrect. 19/ The Commission once again declined the invitation to revise its usable space presumption. 20/

16/ *Petition to Adopt Rules Concerning Usable Space on Utility Poles, Memorandum Opinion & Order,* 56 R.R.2d 707 (rel. July 25, 1984).

17/ *Alabama Power Co. v. FCC,* 773 F.2d 362 (D.C. Cir. 1985).

18/ *In re. Amendment of Rules & policies Governing the Attachment of Cable Television Hardware to Utility Poles, Notice of Proposed Rulemaking*, CC Docket No. 86-212 FCC 86-274 (rel. June 6, 1986)

19/ Alabama Power argued that the Commission should not presume that usable space begins at the 18 foot level on a pole and that the safety space should not be assigned to usable space. Comments of Alabama Power Co., FCC Docket No. 86-212 , at 4.

20/ *Amendment of Rules & Policies Governing the Attachment of Cable Television Hardware to Utility Poles, Report & Order,* 2 FCC Rcd 4387 (1987), *on recon.,* 4 FCC Rcd 468 (1989).

Like a bad penny, the question of usable space has resurfaced, yet again, in the utilities' Whitepaper in this proceeding. And the Commission has dutifully -- again -- volleyed the question to all parties in its NPRM. Time Warner believes that there is no basis for the Commission to revise the determinations it has made and reaffirmed many times over the past two decades.

1. Pole Height

The Commission questions whether it should revise the presumptive average pole height of 37.5 feet. *NPRM* ¶ 18. The utilities' Whitepaper states that the average height of poles is increasing and that today's average should be considered to be 40 feet. Whitepaper at 10. Although Time Warner agrees that the average length of utility poles used for cable (and telecommunications) attachments is longer than 37.5 feet, we do not recommend revising the formula.

Cable television parties provided information to the Commission in 1983 that, based on four statewide surveys, the actual average length of utility poles used for cable attachments was in a range of 38.2 feet to 42.13 feet. 21/ And Time Warner concurs with the representation that pole lengths are gradually increasing as older poles are replaced. See Statement of Kim Reid, Attachment

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21/ *See In re Petition to Adopt Rules Concerning Usable Space on Utility Poles,* 56 R.R.2d 707, 711 (rel. July 25, 1984).

A hereto. Were the Commission to determine that substantial revisions should be made to the formula in other respects, Time Warner would urge that the average pole height be adjusted as suggested. But we wish to be consistent here in suggesting that the various changes that *could* be made in the formula probably would not have a significant bottom-line effect, so long as other reasonable adjustments were simultaneously made. In other words, in the interest of maintaining the simplicity and directness of the existing formula, Time Warner is willing to forgo this particular, clearly justified, enhancement to the accuracy of the formula.

Time Warner certainly does not believe that poles 30-feet and shorter should be excluded from the formula, as suggested in the White Paper. Many 30 foot poles are used as drop poles, 22/ and they are used in other situations where there are limited electric facilities on the pole or where the minimum grade requirements permit it. 23/ With six feet of pole buried to give stability, even where the lowest attachment is placed at 18 feet, there are 6 feet of usable space on a 30 foot pole. And telephone companies can fit telephone and cable attachments even on 25 foot poles in many cases where there are no

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22/ As noted *infra,* the minimum attachment height in yards and back lots, where many drop poles are located, is well below 18 feet.

23/ There are numerous situations where attachments may be made well below the 18 foot level. See pp. 12-14, *infra.*

electric facilities. See Reid Statement, Attachment A. Significantly, the utilities have referenced no support for the assertion that 30 foot poles are not still well-represented in their pole investment accounts. And we note that no pole surveys submitted to the Commission by utilities to the Commission in response to pole attachment complaints have demonstrated the absence of these poles. 24/ The lack of such showings is especially telling, because the utilities have always had the right to submit survey data to the Commission rebutting the usable space presumptions. 25/ That they have not overwhelming submitted data demonstrating that the Commission's usable space presumptions are rebutted in particular cases indicates that the Commission's presumptions continue to be valid, if not overly conservative.

Some of the recent data that Time Warner has been provided by utilities related to pole heights also indicates the continuing validity of the Commission's presumptions. For example, as evident from Attachment B, 22.6 percent (57,046 of 252,645) of Kansas City Power & Light's ("KCPL's") wood

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24/ To the contrary, all of the most recent pole surveys mentioned in Commission decisions show a significant presence of poles 30 feet and shorter. *See Continental Cablevision of New Hampshire, Inc. v. Concord Electric Co.*, PA-82-0074 (rel. July 3, 1985) (12% poles 30 feet and less, compared to 3% 45 feet and longer); *Texas Cablevision Co. v. Southwestern Electric Power Co.*, PA-84-0007 (rel. Feb. 26, 1985) (20% poles 30 feet, compared to 10% poles 45 feet and longer).

25/ 72 F.C.C.2d at 69.

poles are 30 feet and less. Although we do not contend that KCPL's pole account is proof of other utilities' accounts, it does lend support to our belief that 30 foot poles continue to be an important part of the pole plant of electric utilities.

2. Minimum Grade

As they have since 1978, the utilities argue that the minimum grade clearance used in figuring usable space should be raised above 18 feet. The Whitepaper argues, wholly without any empirical support, that the starting point for usable space on a pole should be set at 19.8 feet above the ground. Whitepaper at 10. The utilities apparently base their contention solely on the proposition that the lowest line on the pole must observe 18 feet of clearance at midspan and that the line will experience some sag. The analysis is wrong about the minimum ground clearance required by the NESC at midspan.

Incredibly, the Whitepaper does not even acknowledge that the NESC was revised in 1990 to make clear that the minimum actual clearance over roadways is 15.5 feet, and along roadways, in many instances, is 15 feet. Required clearance for communications wires along rural roads is typically 13 feet, and where it is not expected that pedestrians will travel, the clearance may

be as little as 9.5 feet. 26/ The clearance required prior to 1990 -- generally 18 feet -- was deemed by the NESC to be "overly conservative." 27/

These standards are the minimums required to be met at all times, and construction is required to take into account the likelihood of increased sag under certain weather conditions, such as ice and wind. To determine the actual minimum height where attachment is permitted in any particular case, the construction manager determines the minimum required height above the ground at midspan, and then computes the necessary sag by considering: (1) the characteristics of the strand and wire, (2) the span length, and (3) the generally expected loadings due to weather in that area. The amount of sag can all be calculated, and indeed is typically calculated by commercially available computer programs.

The ultimate effect of the new standards combined with the required loadings is that often attachments may be made well below the 18 foot level on a pole, even where the line crosses a road. And in many cases the attachment may be made even lower, reflecting midspan vertical clearances as low as 9.5 to 13 feet.

26/ Institute of Electric and Electronics Engineers, Inc., National Electrical Safety Code, 1990 Edition, Table 232-1. See Attachment C.

27/ NESC, Appendix A at 394.

Time Warner submits as Attachment A to these Comments the Statement of Kim Reid, Director of Construction for Time Warner Cable in New York City, who has 25 years of experience in constructing cable plant across the country. Mr. Reid has calculated that, taking a typical situation with 1/4 inch steel strand and 1/2 inch coaxial cable and a span of 150 feet, 28/ in areas of the country considered "heavy loading," the amount of sag that must be provided for to meet adverse conditions is 2.94 feet. In "light loading areas," the sag anticipated under adverse conditions would be 2.32 feet. This means that to achieve 15.5 feet of clearance at midspan, the attachments must be made at 18.44 feet above the ground in "heavy loading" areas and at 17.82 feet above the ground in "light loading" areas. Where the required midspan clearance is 13 feet, the attachments could be made at 15.94 feet and at 15.32 feet, and so on. The Commission's reliance on 18 feet of minimum grade clearance continues to be, if any thing, conservative.

3. Safety Space.

Once again the utilities attempt to have the Commission change its mind on the treatment of the 40-inch safety space. The Commission has

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28/ Mr. Reid states that Time Warner uses 1/4 inch strand and 1/2 inch coaxial cable in about 70 percent of its construction and that aerial spans are typically about 135 to 160 feet in length. See Attachment A.

addressed this issue *ad nauseum*. 29/ But the Commission has never suggested, as stated by the Whitepaper, that the safety space "cannot be included in the calculation of the usable space." White Paper at 11. To the contrary, the Commission has always made it abundantly clear that the safety space *is* part of the usable space. "Usable space" is defined in the statute as "space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment." 30/ Not only is the cable operator required to incur "make-ready" expenses to be certain that the 40 inches of safety space are maintained on a pole when making an attachment, but utilities have always made "resourceful use" of the safety space by attaching facilities such as street lights, transformers, and grounded, shielded power conductors in that space. 72 F.C.C.2d at 71. As the Commission said in 1979, "[s]uggestions that the safety space be entirely excluded in the determination of usable space must be similarly rejected." *Id.* The Commission affirmed this holding on reconsideration in 1980, noting that "street light brackets, transformers, and the like are 'associated equipment' within the meaning of [Section 224(d)(2])." 77 F.C.C.2d at 191. In the face of a challenge to the Commission's determinations

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29/ *See, e.g.,* 72 F.C.C.2d at 69-71; 77 F.C.C.2d at 188-91; 56 R.R.2d at 709-10.

30/ 47 U.S.C. § 224(d)(2).

regarding usable space, the D.C. Circuit affirmed the Commission in the *Monongahela* case. 31/

The only thing that has changed since 1980 regarding usable space is that in 1996, for the first time, Congress gave cable operators limited squatters rights on the pole. No longer can the utility require the cable operator to make room for future attachments of any party, including the utility, 47 U.S.C. § 224(i), except that the Commission has ruled that the utility may reserve space for future uses consistent with a "bona fide development plan." 32/. This statutory change is not enough to justify changing the treatment of the safety space as "space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment" under Section 224(d)(2) of the Act. The utilities still make "resourceful use" of the space, and cable operators continue to bear the responsibility for assuring that the safety space may be maintained at the time of attachment. Moreover, the utilities have the right to reserve space on the pole -- where they have plans for additional use. To a large degree, therefore, the cable operators continue to bear the risk of

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31/ 655 F.2d 1254.

32/ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report & Order,* CC Docket No. 96-98, FCC 96-235, ¶ 1169 (rel. Aug. 8, 1996).

maintaining the space. And finally, it is noteworthy that Congress did not amend the formula for cable attachments in the 1996 Act. 33/

The FCC's usable space calculations have been in place more than 15 years, and have been the subject of numerous challenges. Congress repealed the sunset provision in 1982 that would have deleted the pole attachment formula, and declined to touch the Commission's interpretation of the safety space as usable space, either then or in the 1996 Act. There is no reason to believe, therefore, that Congress desired its change in cable operators' access rights in 1996 to have any effect on the Commission's continued treatment of safety space as "usable" under the formula.

B. Pole Investment

The Whitepaper also argues to reopen several issues regarding the manner in which the investment in poles is calculated.

1. Exclusion of Different Size Poles

As noted above, there is no reason to exclude smaller poles from the calculations because smaller poles *are* used for cable attachments. In fact, smaller poles are actually used more for cable attachments than are the larger

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33/ Congress did amend the formula for telecommunications attachments beginning in 2001, but even there did not suggest any intent to revise the Commission's historic determination regarding safety space.

poles, those of 50 feet or more. In the experience of Kim Reid, Time Warner's Director of Construction in New York City, cable operators attach to more poles 30-feet and shorter than to poles 50 feet and longer. See Attachment A. Moreover, as evidenced by the latest pole surveys referenced in Commission Orders, utilities have more poles 30 feet and shorter than poles 50 feet and longer. 34/ The pole records of KCPL, found in Attachment B, reflect this same phenomenon and show 57,046 of the shorter poles and only 17,189 of the taller poles.

There is considerably less justification for refusing to consider the investment in shorter poles than there is for refusing to consider the investment in taller poles. Were the FCC to exclude both the poles that are 30 feet and shorter and 50 feet and longer, we expect that the average pole investment would actually decrease. And in fact that is what we find if these exclusions are performed with the pole investments of KCPL. The average gross pole investment of all of KCPL's wood distribution poles is $341.29 ($86,225,346÷252,645). Were the taller and smaller poles excluded from the investment, the average gross investment would be $272.50 ($63,946,236÷234,668). 35/

34/ See note 24 *supra*.

35/ See Attachment B.

Time Warner does not recommend that the formula be revised to reflect these exclusions because (1) some shorter and some longer poles are used for attachment and (2) we believe the Commission should avoid "refinements" of its formula that make it more complicated, especially where the refinements rely on internal, unreported utility accounting. It is important for cable operators to be able to obtain as much information as possible from the utilities' annual reports. The Commission's current methodology relies almost entirely on publicly available information filed by the utilities with their federal and state regulatory authorities. Having the information publicly available makes calculations more "simple and expeditious" and dispute resolution easier.

2. Lightning Arresters and Grounds

The Whitepaper also suggests that the Commission add the utilities' investment in grounds and lightning arresters to the pole investment. Time Warner opposes this "refinement" to the formula. The Commission has previously refused to allocate a portion of Account 365 to the cost of a bare pole based on a utility's unsupported claim that a percentage of Account 365 consists of grounds and related items. 36/

36/ *Group W. Cable, Inc. v. Wisconsin Electric Power Co.*, PA-82-0062, FCC 85-175, ¶ 11 (rel. Apr. 19, 1985)..

We do not dispute that lightning arresters and grounds, as properly included in account 365, benefit the poles as well as other overhead plant. (We do dispute, however, the assertion that the transformer lightning arresters in Account 368 have anything to do with the pole.) The question is whether the utilities have any readily verifiable way to determine with certainty their investment in these items and whether the added complexity in calculation justifies any overall revision to the formula. Utilities have always been permitted to make a showing to the Commission that they have reliable information concerning their investment in additional pole-related investment. 37/ That the utilities have almost universally declined to do so would appear to indicate that the necessary information is simply not available in a reliable form. Before revising the formula, not only would there be a need to determine to what extent the utilities keep accurate separate records of these items, but a large number of additional calculations would be involved.

First of all, if the grounds and lightning arresters in Account 365 were to be included in the average pole investment figure, they would have to be spread across all of the investment accounts that they benefit in addition to poles. Grounds and lightning arresters provide a benefit to the investments in electric company accounts 361 (Structures and improvements), 362 (Station

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37/ See, e.g., *Williamsburg Cablevision v. Carolina Power & Light Co.*, PA-82-0007, Mimeo No. 1961, ¶ 12 & n. 7 (rel. Jan. 26, 1983) (CC Bur.).

equipment), 364 (Poles, towers and fixtures), 365 (Overhead conductors and devices), 368 (Line transformers), 369 (Services), and 373 (Streetlighting and signal systems). Once the investment in grounds and lightning arresters are spread among the appropriate investments they benefit, there is serious question whether the added complexity, as well as the need to rely on internal accounting, is worth the effort.

In addition, were the Commission to delve into the companies' internal accounting to pull out investments in lightning arresters and grounds, the Commission should also require the utility in every instance to produce its internal records for Account 364 (Poles, towers and fixtures) to permit the cable operator to calculate the utility's actual investment in appurtenances that are not directly pole related. The cable industry has long maintained that most electric utilities have much more than the Commission's presumptive 15 percent of Account 364 invested in non-pole related items. Under current practice, electric utilities generally do not disclose to cable operators their continuing property records showing their actual breakdown of Account 364 investment. But information submitted to Commission in CC Docket No. 86-212 demonstrated that for typical electric companies, more than 20 percent of Account 364 consisted of appurtenances and hardware, other than guys and anchors. 38/

38/ See Comments of Continental, et al, CC Docket No. 86-212, submitted September 11, 1986.

KCPL's 1995 Annual Plant Report indicates that 27.9 percent ($24,477,719÷$87,672,498) of its Account 364 consists of items other than wood poles, anchors, and guys. 39/

Although we believe that considering all of these internal accounts might result in a marginally more accurate formula, Time Warner believes that the inevitable increase in disputes, as well as the added complexity in the formula, would not be justify the marginal improvement in accuracy.

The Commission recently affirmed its disinclination to "disaggregate" an account "in a way favorable" to the utility. "If we were to allow that exclusion," the Commission concluded, "we would also, in fairness to [the cable operator] require [the utility] to disaggregate other accounts to eliminate other mismatches between investments and expenses. We decline to take that step because *it would unduly complicate the pole attachment rate calculation process without materially increasing its accuracy."* 40/

C. Negative Accumulated Depreciation Balances

SBC has requested a revision of the formula, or a waiver, to adjust for the fact that its poles in Oklahoma have a negative net cost, when

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39/ See Attachment B.

40/ *American CableSystems of Florida, Ltd. v. Florida Power & Light Co.*, P.A. 95-1364, PA 91-0012 (rel. June 15, 1995) (emphasis added).